

**ORDER SHEET**

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

Civil Revision Application No.S- 111 of 2012

**(Mst. Merajun Nisa through her L.Rs & Ors v. Khawaja Moinuddin & Ors)**

Date of hearing	Order with signature of Judge
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**Hearing of case (Priority)**

1. For hearing of main case
2. For hearing of CMA 651/2022(Stay)

M/s Abdul Naeem and Faisal Naeem, Advocates for the applicants.  
Mr. Kamran Mobeen Khan, Advocate for respondents No.8 to 15.  
Mr. Asfandyar Kharal, Assistant A.G-Sindh.

Date of hearing: **08-05-2023**

Date of Order: **08-05-2023**

**O R D E R**

**Zafar Ahmed Rajput J.-** Respondents No.1 to 18 / plaintiffs filed a Civil Suit bearing No.43 of 2011 (re: **Khawaja Moinuddin and others v. Mst. Merajun Nisa and others**) for declaration and permanent injunction in respect of immovable property bearing No.II-B-20/925, situated at Gambat District Khairpur, wherein applicants / defendants were declared *ex parte* by the trial Court vide order dated 01.11.2011. Subsequently, the said suit was proceeded *ex parte* and vide judgment dated 24.01.2012 and decree drawn on 31.01.1012, the suit was dismissed by the trial Court observing that the jurisdiction of the Civil Court was barred to entertain the suit involving dispute of title relating to evacuee property. Against that judgment and decree, the respondents / plaintiffs preferred Civil Appeal No.109 of 2012 (re: **Khawaja Moinuddin and others v. Mst. Merajun Nisa and others**), wherein applicants No.3 & 5 filed their written objections to the Civil Appeal through their counsel. On 28.08.2012, the appellate Court by observing that the applicants No.3&5 / defendants were

not served with the process of the Court, as their wrong addresses were shown in the plaint, remanded the matter to the trial Court with directions to allow applicants / respondents / defendants No.3&5 to file their written statement and process against the remaining respondents be issued, thereafter both parties may be given full and fair chance of hearing and thereafter trial Court should decide the matter on merit. It is against that order, that the instant Civil Revision Application has been preferred by the applicants / defendants.

2. Heard, record perused.

3. It is an admitted position that the applicants No.3&5 filed their written objections to the Civil Appeal. They have also filed along with instant Civil Revision their respective affidavits, wherein they have categorically stated that neither they nor their counsel had given their consent either verbally or in writing before the appellate Court for remanding the case to the trial Court. The private respondents have not rebutted the affidavits of the applicants No.3&5 by filing any counter-affidavit. It does not appeal to a prudent mind that the judgment and decree, which were in favour of the applicants / respondents / defendants, would not be contested by them on merit and they record their consent for remanding the matter to the trial Court to decide afresh after serving notices upon them.

4. In view of the above facts and circumstances of the case, impugned order dated 28.08.2012, passed by the appellate Court is set aside and the matter is remanded to the appellate Court to decide Civil Appeal No.109 of 2012 afresh on merits after giving opportunities to the parties to advance their respective arguments.

5. Instant Civil Revision along with listed application stands **disposed of** in the above terms.